

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs June 7, 2005

**STATE OF TENNESSEE v. CURTIS PALMER**

**Appeal from the Criminal Court for Shelby County**  
**No. 03-04188          James C. Beasley, Jr., Judge**

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**No. W2004-01748-CCA-R3-CD - Filed December 9, 2005**

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JOSEPH M. TIPTON, J., concurring.

I concur in the results and most of the reasoning in the majority opinion. I respectfully disagree, though, with its conclusion that an oral request can suffice for the requirement in T.C.A. § 40-18-110(b), (c) that the jury instruction request must be in writing and specifically identify the lesser included offense for which instruction is sought. As I have previously concluded, though, the statute does not bar this court from considering the lack of an instruction on a lesser included offense as plain error. See State v. Roberto Vasques, et al., No. M2004-00166-CCA-R3-CD, Davidson County, slip op. at 24 (Tenn. Crim. App. Oct. 7, 2005). However, I agree with the majority opinion's conclusion that any error was harmless.

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JOSEPH M. TIPTON, JUDGE